

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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MAR 30 1998

FCC MAIL ROOM

In the matter of

Implementation of the
Telecommunications Act of 1996:

CC Docket No. 96-115

Telecommunications Carriers' Use of
Customer Proprietary Network Information
and Other Customer Information

Implementation of the Non-Accounting
Safeguards of Sections 271 and 272 of the
Communications Act of 1934, as Amended

CC Docket No. 96-149

**COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA
AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA ON THE FURTHER NOTICE OF PROPOSED
RULEMAKING**

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March 27, 1998

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I. INTRODUCTION AND SUMMARY

The People of the State of California and the Public Utilities Commission of the State of California ("CPUC" or "California") hereby respectfully submit these comments on the Further Notice of Proposed ("FNPRM"), appended to the Second Report and Order ("Second R&O") released by the Federal Communications Commission ("FCC" or "Commission") on February 26, 1998. The Second R&O and the FNPRM address the privacy rights of telecommunications customers and the duties and obligations of all telecommunications carriers to protect customer

proprietary network information (CPNI).¹ Section 222 of the Telecommunications Act of 1996 establishes CPNI requirements for all telecommunications carriers, including resellers.²

The FNPRM seeks comment on the following issues: (a) the customer's right to restrict use of CPNI for all marketing purposes; (b) the appropriate protections for carrier information and additional enforcement mechanisms; and (c) the foreign storage of, and access to, domestic CPNI. The Commission notes that its Second R&O only requires carriers to provide notification if they wish to use, disclose, or permit access to CPNI beyond the purposes specified in Sections 222(c)(1)(A) and (B) of the 1996 Act,³ but does not decide whether customer notification is required to use CPNI within the scope of such sections. (FNPRM, ¶127, fn 477.) If a commenter believes that notification is required, whether within or outside of an existing customer-carrier service relationship, the Commission asks whether and what form of notification should be required.

The CPUC currently has under consideration its position on a customer's right to restrict carrier use of CPNI for all marketing purposes, within the customer's existing

¹ CPNI, as defined in the Second R&O, refers to (1) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is available to the carrier, solely by virtue of the customer-carrier relationship; and (2) information contained in the bills pertaining to telephone exchange service or telephone toll service received by the customer of a carrier. CPNI does not include subscriber list information. (47 C.F.R. Sect. 64.2003(c).)

² Telecommunications Act of 1996, Pub.L.No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. Sections 151 *et seq.*; hereinafter, "the 1996 Act").

³ For the provisions of Section 222(c)(1)(A) & (B), *see supra*, pp. 3-4.

service relationship with the carrier. Therefore, it will not comment at this time on issues raised by this portion of the FNPRM.

II. CUSTOMER RIGHT TO RESTRICT CARRIER USE OF CPNI FOR MARKETING PURPOSES

The CPUC agrees with the FCC's observation that Section 222 is silent on whether a customer has the right to restrict a telecommunications carrier from using, disclosing, or permitting access to CPNI within the existing service relationship. (FNPRM at ¶204). Moreover, the legislative history did not provide us any clues. The California state constitution and statutory law contain provisions protecting the privacy rights of California residents, however, these laws do not specifically address the CPNI issue. Furthermore, the Commission has not yet interpreted existing laws as to CPNI within the customer's service relationship with the carrier.

The CPUC recognizes that carriers must have access to CPNI for such purposes as billing, inside wiring installation, maintenance, and repair services. The CPUC believes at a minimum that this is the type of service that Congress had in mind when it referenced "services necessary to" the provision of telecommunications service, as shown in Section 222(c)(1)(A) & (B) in the 1996 Act:

"(1) Privacy Requirements for Telecommunications Carriers. - Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer

proprietary network information in its provision of (A) the telecommunications services from which such information is derived, or (B) services necessary to, or used in the provisions of such telecommunications service, including the publishing of directories.”

The CPUC agrees that these services are an integral part of providing telecommunications service, or are necessary to the provision of the adequate provision of any category of service to which a customer currently subscribes. California has not yet decided whether services necessary to the provision of telecommunications services should be more expansively defined.

III. CONCLUSION

The CPUC respectfully submits these comments for the Commission’s consideration in formulating rules that will protect customer information while simultaneously enhancing competition, as called for by Section 222 of the 1996 Act. As indicated in the Second R&O, ¶18, the Commission should not rush to preempt the states, but rather, it should examine state CPNI rules on a case-by-case basis, giving deference to a state’s experience in balancing and implementing

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important public policy. Once California decides its policy on use of CPNI within customer's existing service relationship, it will supplement these comments by filing the CPUC order with the FCC.

Respectfully submitted,

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By: /s/ MARY MACK ADU

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State Of California

March 27, 1998

CERTIFICATE OF SERVICE

I, Mary Mack Adu, hereby certify that on this 27th day of March, 1998, a true and correct copy of the foregoing document entitled, "COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE FURTHER NOTICE OF PROPOSED RULEMAKING" was mailed first class, postage prepaid to all known parties of record.

/s/ MARY MACK ADU

MARY MACK ADU